1951.

File No. Police II/51 (N)

Legal Department.

B. **BRANCH**

K

Subject:—

Notifications under the

Bombay Police Act, 1951

PB

File No. Police II/51 (N)

Gen. 194

644-B

Office of the R.L.A.

A revised draft notification is sent herewith. It is presumed that the proposed fees are intended to be specified for the whole of the State of Bombay.

2. Under section 167 of the Bombay Police Act, 1951, all orders made under the City of Bombay Police Act, 1902 and the Bombay District Police Act, 1890 in so far as they are consistent with this Act have been saved. The notification inquestion should, therefore, be issued in supersession of all previous orders, after the Act has been brought into force.

Id/-J.R.D. 11/7
Remembrancer of Legal Affairs.

U.R. to H.D.No.11007, dated the 12th July 1951.

BKS. 28/6/ 4c.

2/7

K.S.R.
2/7

Office of the R.L.A.

The H.D. thinks that unless powers under sub-section (2) of section 10 of the Bombay Police Act, 1951, are delegated to the Deputy or Assistant Commissioners of Police they will be without any powers on the day on which the ~~x~~ Act comes into force.

x x x x

2. It is also proposed by the H.D. to issue a notification under section 95(1) of the Act delegating to all police officers above the rank of an Inspector of Police, the powers to depute any police officer to exercise the powers specified under section 95 of the Act. The said notification is not in order for the following reasons :

Sub-section (1) of section 95 of the Act provides that any Police Officer generally or specially deputed; in Greater Bombay, by the Commissioner and elsewhere by the District Superintendent or any other officer specially empowered in that behalf by the State Government may without warrant enter any shop or premises for ~~x~~ the purpose of inspecting or searching for any weights etc ..... What the sub-section contemplates is that in Greater Bombay, the Commissioner is empowered to depute any police officer to exercise the powers under the Act and elsewhere the District Superintendent is empowered to depute any police officer to exercise the powers under the said section. The State Government's power to issue a notification under sub-section (1) extends to cases where any other officer who is not a police officer is to be specially empowered by the State Government to exercise the powers specified in the said section. The words "other officer" have been used in contradistinction to the words "any police officer" and must be given

their plain meaning. That being the case, it is not competent for the State Government to empower any police officer to exercise the powers specified in the section.

Id/-J.R.D. 31/7
Remembrancer of Legal Affairs.

U.R. to H.D.No. 12268, dated the 31st July 1951.

BKS. 28/6/ 4c.

It appears from these papers that Government gave their sanction by their letter No. 5309/5-Poll. dated the 13th December 1948 (page 81 ante) to the draft notification (pp. 77-78 ante) proposed to be issued by the Commissioner of Police under sub-section (1) of section 22 of the City of the Bombay Police Act, 1902 (Bom. IV of 1902). The draft notification purported to amend the Rules for Places of Public Amusement in the City of Bombay, 1914. Item 3 of that notification proposed to substitute '12.15 a.m.' for '1 am a.m.' in the form of Licence for Premises contained in Schedule B to the said Rules. However, at the time of the final publication of the draft notification Government did not give their sanction to the amendment at item 3 inthe said draft notification. As regards that amendment Government directed the Commissioner of Police to submit to them a fresh draft amendment substituting '12 mid-night' for '1 a.m.' (See Government letter at p. 157 ante). Instead of sending a draft amendment to Government for approval as directed, the Commissioner of Police published the draft notification, incorporating the necessary amendment, in the Bombay Government Gazette (p. 2298 Part I of the Bombay Government Gazette dated the 26th April 1951). The question for R.L.A's consideration is whether ex-post-facto sanction should be accorded by Government to the draft notification published, and whether such sanction would validate the amendment in question.

2. The draft notification purports to be issued under clauses (f), (i), (g) and (h) of sub-section (1) of section 22 of the City of Bombay Police Act, 1902. Under sub-section (2) of section 22 of the Act the power of making, altering or rescinding rules under sub-section (1) shall be subject to the condition of the rules being made, altered or rescinded after previous publica-

publication in the manner specified in section 23 of the General Clauses Act, 1897, and every rule made, or alteration or rescission of a rule made, under the said sub-section and sanctioned by the State Government shall be published in the m Official Gazette and in the manner specified in section 137. The fact that, in the present case, Government had directed the Commissioner of Police to make the necessary change inthe rule from 1 a.m. to 12 mid-night amounts to their giving sanction to the alteration of the relevant rule, and therefore, no ex-post-facto sanction, as suggested by the Home Department, is necessary. The draft notification as published properly refers to previous sanction of the Government and, therefore, there does not appear to be any legal objection to the same.

Id/-J.R.D. 11/8
Remembrancer of Legal Affairs.

U.R. to H.D., No. 13013, dated the 13th August 1951.

BKS. 28/6/ 4c.

Office of the R.L.A.

The only question referred to the R.L.A. for opinion is whether by virtue of the provisions of section 167 of the Bombay Police Act, 1951, section 118 of the said Act automatically applies to the whole State of Bombay excluding the Greater Bombay. The answer is in the negative. The notification issued under section 61A of the Bombay District Police Act, 1890 would not be consistent with the provisions of section 118 of the Bombay Police Act, 1951 and as such that notification would not be saved by the provisions of section 167 of the Act. A fresh notification would be necessary under section 118 of the Bombay Police Act. The view taken by the Secretary, Home Department is correct.

Id/-J.R.D. 28/8
Remembrancer of Legal Affairs.

U.R. to H.D. No. 13898 , dated the 29th August 1951.

BKS. 28/6/ 4c.

Legal Department.

A revised draft order in place of draft order at page 7 ante is sent herewith.

2. Section 31 of the Bombay Police Act, 1951 which appears under Chapter III would not in virtue of the provisions of section 32 of the Act, apply to railway police and it would not accordingly be competent to empower the Superintendent of Police, Railways, to exercise the powers under clause (b) of section 31 (1) of the Act. The reference to the railway police has, therefore, been omitted from the revised draft notification.

3, The Home Department draft order at page 7 ante empowers the Police Officers specified in the order to require a Police Officer to vacate premises allotted to him for his residence on his ceasing to be a Police Officer but no authorisation for this purpose is necessary as under the very provisions of clause (b) of section 31 (1) of the Act such Police Officer is required to vacate the premises on his ceasing to be a Police Officer Authorisation is necessary in other cases. The revised draft Order therefore omits reference to the fact of a Police Officer ceasing to be the Police Officer.

Id/-
11/9
Deputy Secretary to Government.

U.R. to H.D. No. 14513, dated the 12th September 1951.

BKS. 28/6/ 4c.

OFFICE OF THE R.L.A.

The H.D. proposes to issue a notification under section 42 of the Bombay Police Act, 1951 with effect from the date on which the said Act came into force presumably to keep continuity of the operation of the notifications issued under section 41 of the Bombay District Police Act, 1890 which corresponds to section 42 of the Bombay Police Act, 1951. Under the proviso to sub-section (1) of section 167 of the latter Act, however, all notifications under the repealed Act sofar as they are consistent with the new Act shall be deemed to have been made under the corresponding provisions of the new Act. There is no inconsistency between the provisions of section 42 of the Bombay Police Act, 1951 and section 41 of the Bombay District Police Act, 1890, which has now been repealed. It is not necessary to issue the proposed notification even though there is no objection to its being issued if the H.D. desires to do so. In that case the notification should come into force on the date on which it is published. In other respect the notification is in order.

Id/-J.R D. 19/11
Remembrancer of Legal Affairs.

U.R. to H.D.No. 18555 ,dated the 20th November 1951.

BKS. 28/6/ 4c.

Office of the R.L.A.

Section 8(2) of the Bombay Police Act, 1951, empowers the State Government to direct that an Additional Superintendent of Police shall exercise the powers of a District Superintendent of Police in any district or any part thereof. The proposal that such powers should be exercised under the orders of the District Superintendent of Police is not warranted by the provisions of the section and would not be legal.

Id/-J.R.D. 3/11
Remembrancer of Legal Affairs.

U.R. to H.D.No. 17493., dated the 5th November 1951.

BKS. 28/6/ 4 c.

OFFICE OF THE R.L.A.

As already stated in L.D's U.R. No.17492, dated the 5th November 1951 at pages 5-9 ante, the provisions of the Cattle Trespass Act, 1871, do not extend to Greater Bombay. The provisions regarding the impounding of cattle etc. applicable to Greater Bombay are those contained in sections 90 to 94 of the Police Act. According to section 91 of the Act, it is lawful at present for any person to seize and take to public pound for confinement cattle found straying in any street or trespassing upon any private or public property in Greater Bombay not only during night time but also during xx day time, while according to section 118 it is lawful for a person to seize cattle only when they are not kept in confinement or under restraint between one hour after sunset and sunrise. Secondly, according to section 118, upon the cattle being seized and taken to the cattle pound, the owner and other persons concerned become subject to the provisions of the Cattle Trespass Act. While, according to section 92 they will be subject to pay the pound fees and expenses chargeable in respect of such cattle under section 94 i.e. at rates fixed by Government from time to time by notification. Thus, if section 118 is brought into force in Greater Bombay or parts thereof, there will be two sets of conflicting provisions in force in that area with the result that legal complications will arise. It will not, therefore, be correct to bring section 118 into force in Greater Bombay or parts thereof.

To overcome the difficulty, the better course seems to be to xxx bring the provisions of section 91 in line with those of section 118 by amending section 91 by providing for punishment which is not to be found therein at present. Section 118 of the Act may also then be amended so as to restrict xxx its extension to area outside Greater Bombay and thus leave no room for doubt as to the scope of its applicability.

Id/-J.R.D. 15/12
Xxx Remembrancer of Legal Affairs.

BKS. 28/6/ U.R. to H.D.No. 20060,dated the 15th December 1951.

The legislative history of section 118 of the Bombay Police Act,1951 is as follows :

Section 61A of the Bombay District Police Act (which has now been repealed) contained the special provision respecting cattle habitually allowed to stray. Sub-section (2) of section 61A provided that in any local area in which this section is in operation any person who, through neglect or otherwise fails to keep in confinement or under restraint between one hour after sub-set and sun-rise any cattle which are his property or in his charge shall be punished with fine etc. and sub-section (3) of the said section then provided that any person may seize any cattle not being kept in confinement or under restraint as required by section and may take or send the same to the nearest cattle-pound and the owner and the other persons concerned shall thereon be subject to the provisions of the Cattle Trespass Act, 1871. It will appear from sub-section (2) of section 1 of the Cattle Trespass Act, 1871 that the said Act extends to the whole of India except Part 'B' States, except the Presidency Towns and such local areas as the State Government by a notification in the Official Gazette may from time to time exclude from its operation. It will be clear from this provision that the Cattle Trespass Act was not applicable to the Presidency Towns of Bombay. By the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act,1945, the areas of the City of Bombay were extended and the extended area is known as Greater Bombay. By section 4 of the said Act it is provided that the Cattle Trespass Act, 1871 (which is included in Schedule 'D') shall cease to apply to the areas specified in parts II and III of Schedule 'A'. The effect of this provision is that the Cattle Trespass Act ceases to apply to the whole of the Bombay Suburban

District which is now included in Greater Bombay. And by section 3 of the said Act it is provided that the City of Bombay Police Act, 1902 is hereby declared to be in force in Greater Bombay. The result is that so far as Greater Bombay is concerned it will be governed by the provisions of sections 51 to 53 of the City of Bombay Police Act,1902. In that Act there was no provision to the effect that any person who through neglect or otherwise fails to keep in confinement or under restraint between one hour after sun-set and sun-rise any cattle which are his property or in his charge shall be punished with fine etc.....Sections 90 to 94 of the Bombay Police Act,1951, correspond to sections 51 to 53 of the City of Bombay Police Act, 1902 and section 118 corresponds to section 61A of the Bombay District Police Act, 1890. It therefore, appears clear that the Legislature does not intend that in Greater Bombay a provision should be made that any person who through neglect or otherwise fails to keep in confinement or under restraint between one hour after sun-set and sun-rise any cattle which are his property or in his charge shall be punished with fine etc. and it would not be right to extend the provisions of section 118 to Greater Bombay where the provisions of the Cattle Trespass Act, 1871, do not extend under sub-section (2) of section 1 of the Act.

Further it appears from the history of section 61A of the Bombay District Police Act, 1890 that sectio was inserted in the Bombay District Police Act, in 1918, for the following reasons :-

"The provisions of Chapter III of the Cattle Trespass Act, 1871, are inadequate to check the evil. It is not possible to catch a sufficient number of cattle appreciably to reduce the nuisance, and even in areas

to which section 26 of the Act has been ~~xx~~ extended, it is rarely possible to prove that animals belonging to a particular person have caused the damage in a particular case. The provisions of this Bill penalize the act of permitting the cattle to stray, which is an easier fact to prove, and it is therefore believed that they will afford an effective remedy."

As the Cattle Trespass Act, 1871 does not extend to the Presidency Towns of Bombay ~~x~~ no similar provision was made in the City of Bombay Police Act when the Bombay District Police Act, 1890 was amended in the year ~~1x~~ 1918 for the reasons stated above. It will appear from section 91 of the Bombay Police Act, 1951 that provisions of the said section are so wide enough as to enable a Police Officer to seize and take to public pound for confinement therein any cattle found straying in any street or trespassing upon any private or public property in Greater Bombay not only during night time but also during day time. There is no such provision in section 118 under which cattle are to be kept in confinement only between one hour after sun-set and sun-rise.

Id/-J.R.D.
5/11
Remembrancer of Legal Affairs.

U.R. to H.D. No. 17492, dated the 5th November 1951.

BKS. 28/6/ 4c.